TO: Chair and Members Planning Committee
WARD(S) AFFECTED: CITY WIDE

COMMITTEE DATE: September 7, 2011

SUBJECT/REPORT NO: Repeal Store Hours By-Law R79-202 (PED11011(a)) (City Wide) (Outstanding Business List Item)

SUBMITTED BY: Tim McCabe
General Manager
Planning and Economic Development Department

PREPARED BY: Bill Young 905-546-2424 Ext. 2469
Marty Hazell 905-546-2424 Ext. 4588

SIGNATURE:

RECOMMENDATION

a) That the Store Hours By-law R79-202, being a by-law to set hours when shops are required to be closed to the public, be repealed; and,

b) That the item titled Store Hours be identified as completed and removed from the Planning Committee Outstanding Business List.

EXECUTIVE SUMMARY

This Report is in response to the January 2011 City Council direction to “…provide an opportunity to engage the community and the BIA’s with the intent to repeal the Store Hours By-law”.

Ten of the City’s 13 Business Improvement Associations (BIA) support eliminating the Store Hours By-law and relying instead on the Retail Business Holidays Act to regulate store hours. Staff recommends eliminating the Store Hours By-law to allow retailers to best determine their hours of operation, and to create a level playing field with retailers outside the City limits.
Vision: To be the best place in Canada to raise a child, promote innovation, engage citizens and provide diverse economic opportunities.

Values: Honesty, Accountability, Innovation, Leadership, Respect, Excellence, Teamwork

In December 1979, the former Regional Municipality of Hamilton-Wentworth enacted By-law R79-202 to regulate the hours of closing of retail shops within the Regional area. The by-law came into force on January 4, 1980.

The (former) Economic Development and Planning Committee, on November 2, 2004, directed staff to “…consult with all stakeholders involved with the Store Hours By-law including but not limited to, the Business Improvements Associations (BIA), Business Associations and Malls, and the public, to review whether the existing store opening hours and exemptions need to be revised, and to report back to Committee thereafter”.

In 2006, after extensive consultation and research, staff recommended that the Retail Business Holidays Act be relied on to regulate store hours, and that the Regional Store Hours By-law R79-202, be repealed to place Hamilton on an equal footing with other municipalities with respect to store hours, and to provide consumers with more choice locally. However, after due consideration, Council did not approve the recommendation but directed staff to prepare an amending by-law to include Sunday hours of operation.

On January 18, 2011, staff reported to the Planning Committee through Report PED 11011, a copy of which is attached as Appendix “A” to this Report, recommending:

(a) That the Store Hours By-Law R79-202 be repealed and replaced with the proposed by-law attached as Appendix “A” to Report PED11011 which attends to updates and housekeeping changes; and,

(b) That the following application fees for exemptions under the Store Hours By-law be approved and added to the City’s User Fee and Charges By-law:

   (i) $100 (single store),
   (ii) $150 (shopping mall or group of five or more stores on the same property).

However, Committee, and subsequently City Council on January 26th 2011, directed staff to “…provide an opportunity to engage the community and the BIAs with the intent to repeal the Store Hours By-law”.

Alternatives for Consideration – See Page 4

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<tr>
<th>FINANCIAL / STAFFING / LEGAL IMPLICATIONS (for Recommendation(s) only)</th>
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<td>Financial / Staffing / Legal: N/A</td>
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<th>HISTORICAL BACKGROUND (Chronology of events)</th>
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Staff met on several occasions with Hamilton Area Business Improvement Area (HABIA) to discuss and solicit their opinions on repealing this by-law. Rather than take a collective position, HABIA referred the matter to each individual BIA for comment. The results, as detailed in Appendix “B” to this Report, are that ten BIAs support and three BIAs (Barton Village, Locke and Stoney Creek) oppose eliminating the Store Hours By-Law.

Staff also held a public meeting on June 21, 2011. The meeting was advertised on June 14, 2011. However, only three persons attended, and none supported eliminating the Store Hours By-law.

POLICY IMPLICATIONS

N/A

RELEVANT CONSULTATION

Legal Services, City Clerks, and the Hamilton Police Service were consulted in the preparation of this Report.

ANALYSIS / RATIONALE FOR RECOMMENDATION

Since its passing in December 1979, By-law R79-202 has been administered by the Clerk of the City of Hamilton, which includes answering inquiries about retail hours/closings, processing and approving applications for exemptions, etc. Enforcement of the by-law has been reactive (complaint driven) only, and has mostly included correspondence to violators from the City Clerk with notification to the Hamilton Police Service and Municipal Law Enforcement in case of continued non-compliance.

The use of a Store Hours By-law in Ontario is limited to Hamilton and Sudbury, while virtually all other municipalities rely on the Retail Business Holidays Act to regulate store hours.

Repealing this by-law would allow retailers to determine the best hours to operate and provide service to Hamilton residents. In addition, this would also allow retailers to compete on a more even playing field with retailers outside the City limits.
Maintain the status quo with the City continuing to follow the Store Hours By-law. However, City of Hamilton retailers would continue to be exposed to the significant competition issues with surrounding municipalities with shoppers travelling to neighbouring municipalities to shop in stores with longer hours thereby taking dollars out of the municipality.

If this alternative is selected, it is recommended that the by-law be updated and that fees be established to allow cost recovery of administering and enforcing the by-law, as detailed in Report PED11011, a copy of which is attached as Appendix “A” to this Report.

**CORPORATE STRATEGIC PLAN** (Linkage to Desired End Results)


- **Growing Our Economy** - Competitive business environment

**APPENDICES / SCHEDULES**

Appendix “A” to Report PED11011(a) - Report PED11011
Appendix “B” to Report PED11011(a) - HABIA Members Recommendations and Comments

WY/dt
TO: Chair and Members  
Planning Committee

WARD(S) AFFECTED: CITY WIDE

COMMITTEE DATE: January 18, 2010

SUBJECT/REPORT NO:  
Store Hours By-Law R79-202 (PED11011) (City Wide)

RECOMMENDATION

(a) That the Store Hours By-Law R79-202 be repealed and replaced with the proposed By-law attached as Appendix "A" to Report PED11011 which attends to updates and housekeeping changes; and

(b) That the following application fees for exemptions under the Store Hours By-law be approved and added to the City’s User Fee and Charges By-law:

(i) $100 (single store),
(ii) $150 (shopping mall or group of 5 or more stores on the same property).

EXECUTIVE SUMMARY

In December 1979, the former Regional Municipality of Hamilton-Wentworth enacted By-law R79-202 to regulate retail store hours within the former Regional area. The By-law has been administered by the Clerk of the City of Hamilton, which includes answering inquiries about retail hours/closings, processing and approving applications...
for exemptions, etc. Enforcement has been reactive (complaint driven) only, and has mostly included correspondence to violators from the Clerk with notification to the Hamilton Police and Municipal Law Enforcement in case of continued non-compliance.

As administration of the Store Hours By-law is being transferred from the City Clerk to the Parking and By-Law Services Division, it is recommended that the By-law intent be maintained, but that it be updated, and that fees be established to allow cost recovery of administering and enforcing the By-law.

Alternatives for Consideration – See Page 6

FINANCIAL / STAFFING / LEGAL IMPLICATIONS (for Recommendation(s) only)

Financial: The recommended processing fees for applications for exemptions under the Store Hours By-law reflect cost recovery, and will result in additional revenues in the order of $5,000 annually.

Staffing: N/A

Legal: N/A

HISTORICAL BACKGROUND (Chronology of events)

In December 1979, the former Regional Municipality of Hamilton-Wentworth enacted By-law R79-202 to regulate the hours of closing of retail shops within the Regional area. The By-law came into force on January 4, 1980.

The (former) Planning and Economic Development Committee, on November 2, 2004, directed staff to “... consult with all stakeholders involved with the Store Hours By-law including but not limited to, the Business Improvement Associations (BIA), Business Associations and Malls, and the public, to review whether the existing store opening hours and exemptions need to be revised, and to report back to Committee thereafter”.

In 2006, after extensive consultation and research, staff recommended that the Retail Business Holidays Act be relied on to regulate store hours, and that the Regional Store Hours By-law R79-202, be repealed to place Hamilton on an equal footing with other municipalities with respect to store hours, and to provide consumers with more choice locally. However, after due consideration, Council did not approve the recommendation but directed staff to prepare an amending By-law to include Sunday hours of operation.

POLICY IMPLICATIONS

N/A

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Values: Honesty, Accountability, Innovation, Leadership, Respect, Excellence, Teamwork
RELEVANT CONSULTATION

Legal Services and City Clerks were consulted in the preparation of this Report.

ANALYSIS / RATIONALE FOR RECOMMENDATION

Since its passing in December 1979, By-law R79-202 has been administered by the Clerk of the City of Hamilton, which includes answering inquiries about retail hours/closings, processing and approving applications for exemptions, etc. Enforcement of the By-law has been reactive (complaint driven) only, and has mostly included correspondence to violators from the City Clerk with notification to the Hamilton Police and Municipal Law Enforcement in case of continued non-compliance.

As administration of the Store Hours By-law is being transferred from the City Clerk to the Parking and By-law Services Division (Municipal Law Enforcement Section), staff used the opportunity to conduct a review of the By-law and its administration as follows:

1) The By-law, which has been amended over time, is out of date and requires housekeeping and technical changes to make it current, and to allow administration to be transferred from the City Clerk to the Parking and By-law Services Division (Municipal Law Enforcement Section). The recommended amendment to repeal and replace By-law 79-202 in no way changes the intent of the By-law.

While the consolidation and up-date are required as recommended in this Report, a complete re-write is required to reflect how retail sales have changed in the last three decades, e.g. the disappearance of "shoe shine shops". Staff intends to undertake a complete re-write of the Store Hours By-law for consideration by Committee/Council in 2011.

2) The By-law dictates that the listed classes of shops within the City must close each day of the year by 9:00 p.m. Mondays to Sundays and remain closed until 5:00 a.m. the next day.

There are a number of classes of shops that are exempt including barber/beauty shops, fruit/vegetable shops, butcher shops, garden centres and nurseries, to name a few. Further exemptions are allowed under the By-law where a store may apply to open for a special occasion including opening/closing sales, anniversary or sidewalk sales, etc, and allows the City Clerk to grant exemptions for a period not exceeding two consecutive days in duration, and for not more than two occasions in any year, where the Clerk is satisfied that the exemption for a special occasion and is not likely to result in excessive noise or traffic congestion in the vicinity of the shop.

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Approximately 15 exemption applications are received annually, primarily from major shopping centers and department stores, with no requirement to pay any application or processing fee. Attached as Appendix “B” to this Report is a listing of the applications processed annually since 2005. The recommended fees will allow for cost recovery of administering and enforcing the By-law.

Traditionally, neither BIA’s or Merchant’s Associations have requested exemptions under the Store Hours By-law. However, should a BIA choose to apply to stay open for a special occasion, the revenues now being made available to them through Council’s recently approved Parking Revenue Sharing program could be used to pay the application fee.

**ALTERNATIVES FOR CONSIDERATION**
(include Financial, Staffing, Legal and Policy Implications and pros and cons for each alternative)

Committee/Council could repeal the Store Hours By-law. Hamilton is one of only two major Ontario municipalities which rely on a Store Hours By-law rather than the Retail Business Holiday Act to regulate store hours.

**CORPORATE STRATEGIC PLAN** (Linkage to Desired End Results)


- **Growing Our Economy** - Competitive business environment

**APPENDICES / SCHEDULES**


Appendix “B” to Report PED11011- Listing of the applications processed annually since 2005.

MH/dt
Attachs.(2)
Appendix "A" to Report PED11011

CITY OF HAMILTON
BY-LAW NO. 10- XXX
SHOP HOURS BY-LAW

Being a by-law to set hours when shops are required to be closed to the public.

WHEREAS sections 8, 9 and 10 of the Municipal Act, 2001 authorize the City of Hamilton to pass by-laws necessary or desirable for municipal purposes;

AND WHEREAS section 148 of the Municipal Act, 2001 authorizes the City of Hamilton to require that retail business establishments be closed to the public at any time;

AND WHEREAS section 425 of the Municipal Act, 2001 authorizes the City of Hamilton to pass by-laws providing that a person who contravenes a by-law of the City of Hamilton passed under that Act is guilty of an offence;

AND WHEREAS the Municipal Act, 2001 further authorizes the City of Hamilton, amongst other things, to delegate its authority, to impose fees or charges on persons for services or activities provided or done by or on behalf of it and to provide for inspections;

NOW THEREFORE, the Council of the City of Hamilton enacts as follows:

1. In this By-law:

   (a) "closed" means not open for the serving of any customer;

   (b) "City" means the municipality of the City of Hamilton or the geographic area of the City of Hamilton as the context requires;

   (c) "Director" means the City's Director of Municipal Law Enforcement and his or her designate or successor;

   (d) "officer" means an individual appointed by the City of Hamilton or assigned by the Director to enforce this By-law;

   (e) "Rural General Store Shop" means a shop carrying on the business of any combination of those Shops set out in subsections 4(d) through 4(f) inclusive, 4(h) through 4(r) inclusive and 4(t), and located in those parts of
the former area municipalities of Flamborough and Glanbrook and zoned Agricultural under By-laws No. 72-22 (Beverly) as amended, 22-87 (West Flamborough) as amended, 75-65-EF-2 (East Flamborough) as amended, 791 (Waterdown) as amended, 901 (Binbrook) as amended, 1078 (Glanford) as amended;

(f) “Shop” means a building or part of a building, booth, stall or place where goods are sold or offered for sale by retail, and barber shops, beauty parlours, shoe repair shops, shoe shine shops and hat cleaning and blocking shops, but does not include a Shop where:

(i) goods or services in the form of or in connection with prepared meals or living accommodation; or

(ii) liquor under the authority of a licence or permit issued under the Liquor Licence Act,

are sold or offered for sale;

2. Subject to the Retail Business Holidays Act, every operator of a Shop within the City shall ensure that during each day of the year their Shop is closed and remains closed from 9:00 o’clock in the afternoon of each of such day until 5:00 o’clock in the forenoon of the day next following.

3. Notwithstanding section 2, every operator of a music store shall ensure their Shop is closed and remains closed between the hours of 9:30 o’clock in the afternoon of Monday, Tuesday, Wednesday, Thursday and Friday of each week and 5:00 o’clock in the forenoon of the day next following, and Saturday of each week is closed and remains closed between the hours of 6:00 o’clock in the afternoon and 5:00 o’clock in the forenoon of the day next following.

4. Section 2 does not apply to any of the following Shops:

(a) barber shops;

(b) beauty parlours;

(c) shoe shine shops;

(d) hat cleaning and blocking shops;

(e) shops for the retail sale of fresh fruit and vegetables;

(f) pharmacies as defined in Drug and Pharmacies Regulation Act;

(g) shops for the retail sale of motor vehicles;

(h) tobacco shops;

(i) news dealer shops;
(j) confectionery shops;
(k) boat and marine supply shops;
(l) grocery store shops;
(m) butcher shops;
(n) shops for the retail sale of fowl;
(o) shops for the retail sale of fish;
(p) shops for the retail sale of dairy products including a dairy bar;
(q) delicatessen shops;
(r) book shops;
(s) Rural General Store Shops;
(t) garden centre and nursery shops;
(u) golf course professional shops;
(v) retail gasoline service stations.

5. Notwithstanding subsection 4(g), every operator of a shop for the retail sale of motor vehicles shall ensure their Shop is closed and remains closed between the hours of ten o’clock in the afternoon of Monday, Tuesday, Wednesday, Thursday and Friday of each week and five o’clock in the forenoon of the day next following, and on Saturday of each week is closed and remains closed between the hours of six o’clock in the afternoon and five o’clock in the forenoon of the day next following.

6.(1) The operator of a Shop may apply for an exemption from any provision of this By-law for the purpose of a special occasion, by filing an application for such exemption with the Director.

(2) The Director may grant an exemption from any provision of this By-law to the operator of a Shop for a period not exceeding two consecutive days in duration, and for not more than two periods in any year, where the Director is satisfied that the exemption for a special occasion is not likely to result in excessive noise or traffic congestion in the vicinity of the Shop.

(3) For the purposes of this By-law a special occasion includes:
   (a) a store opening sale;
   (b) a store closing sale;
   (c) a fire sale;
(d) a bankruptcy sale;
(e) an anniversary sale;
(f) a street or sidewalk sale; and
(g) a sale on a day not more than 30 days prior to a holiday as defined in the Retail Business Holidays Act.

7. The Director is authorized to administer and enforce this By-law including but not limited to prescribing the format and content of any forms or other documents required under this By-law.

8. Fees, including but not limited to fees for exemption applications, under this By-law shall be as set out and approved by City Council from time to time under the User Fees and Charges By-law.

9. An officer may enter on a property at any reasonable time for the purpose of carrying out an inspection to determine whether or not the following are being complied with:

(a) this By-law;
(b) a direction or order made under this By-law; or,
(c) an order made under s. 431 of the Municipal Act, 2001.

10. An officer may undertake an inspection pursuant to an order issued by a provincial judge or justice of the peace under Section 438 of the Municipal Act, 2001 where he or she has been prevented or is likely to be prevented from carrying out an inspection under section 9.

11.(1) Every person who contravenes any provision of this By-law is, upon conviction, guilty of an offence and is liable:

(a) on a first conviction, to a fine of not more than $10,000; and,
(b) on any subsequent conviction, to a fine of not more than $25,000.

(2) Despite subsection 11(1), where the person convicted is a corporation:

(a) the maximum fine in subsection 11(1)(a) is $50,000; and,
(b) the maximum fine in subsection 11(1)(b) is $100,000.

12. If a court of competent jurisdiction declares any provision or provisions of this By-law invalid, it is the intention of Council that the remainder of the By-law shall continue to be in force.
13. All exemptions issued under By-law No. R79-202 which are current and valid on the day this By-law comes into force are deemed to be:

(a) current and valid under this By-law; and

(b) subject to all of the applicable provisions of this By-law.

14. By-law No. R79-202 is repealed as of the date on which this By-law comes into force.

15. This By-law comes into force on the date of its passing.

PASSED this day of , 20

R. Bratina
MAYOR

Rose Caterini
CITY CLERK
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<tr>
<th>BIA</th>
<th>CURRENT BY-LAW REMAIN AS IS</th>
<th>REPEAL THE CURRENT BY-LAW - STORE HOURS WOULD BE REGULATED BY THE &quot;Provincial Retail Business Holidays Act&quot;</th>
<th>ADDITIONAL COMMENTS</th>
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<td>ANCASTER</td>
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<td>After consulting with the membership, I have found a divided mind on this issue. There are several members wanting to leave the by law as it stands but there are a greater number of members wanting to allow the change. The prevailing thought is we are not on an even playing field since some stores are currently open 24hrs (Metro, Shoppers Drugmart etc…) Small businesses should be allowed to open past 9pm if they wish. Or the City needs to ensure all stores close at 9pm with no exceptions. Having the freedom to hold a midnight madness sale without having to apply for a permit will be an asset to small business. Concession BIA Allow the businesses of Hamilton to be governed by the provincial law and repeal the existing By Law</td>
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<td>CONCESSION</td>
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<td>The Downtown Hamilton BIA, although concerned about the effect of the possible removal of the Hamilton Store Hours Bylaw on small business, will accept Council’s decision and will aid our constituents with the transition to wide open store hours if Council approves this action. It is to be noted that many of our retail businesses are destination shops with quality items, specialized service and skilled professionals.</td>
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<td>DOWNTOWN HAMILTON</td>
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